

**TITLE 14. NATURAL RESOURCES**  
**DIVISION 4. DEPARTMENT OF BOATING AND WATERWAYS**  
**CHAPTER 1. DEPARTMENT OF BOATING AND WATERWAYS**  
**ARTICLE 4.5.1. BOATING SAFETY AND ENFORCEMENT FINANCIAL AID**  
**PROGRAM**

**Final Statement of Reasons**

In an Initial Statement of Reasons published May 31, 2002, the Department of Boating and Waterways ("Department") proposed to adopt regulations that implement, interpret and make specific provisions of Assembly Bill (AB) 1827 (Chapter 1354, Statutes of 1969). Specifically, these regulations implement Section 663.7 of the Harbors and Navigation Code (H&N Code), which provides for State financial aid to local agencies for boating safety and enforcement programs on waters under their jurisdiction when certain conditions are satisfied. This program is titled the Boating Safety and Enforcement Financial Aid Program.

The Department accepted public comments on its proposed regulations from May 31, 2002 until July 25, 2002. The Department also accepted oral and written testimony on the proposed regulations at a hearing in Sacramento on July 25, 2002. Nine entities provided oral and/or written comments during the initial 45-day public comment period. A 15-day notice of availability of the modified text of the proposed regulations began on October 15, 2002 and ended on October 30, 2002. Four entities provided comments during the 15-day notice of availability period. However, comments from three of the four entities were identical and not related to modifications of the proposed regulations, and so were not considered in the rulemaking process.

The Department considered all comments received prior to the close of the public comment period. The Department made changes to the regulations as proposed in May, the majority of which are non-substantial changes. These changes are described in detail below.

**I. Update of Information Contained in the Initial Statement of Reasons.**

*Non-substantial changes to the text of the proposed regulations*

There were several non-substantial changes made to the text of the original proposed regulations as a result of the Department's review and public comments. These changes do not impact the Initial Statement of Reasons (Refer to Section \_\_\_\_ of this Rulemaking file for the Initial Statement of Reasons).

1. The original proposed regulations did not provide a clear, definitive reference to the first paragraph of Section 6593.11. This change clarifies the reference for the first paragraph of Section 6593.11 by adding "(a)" to the paragraph. The remainder of Section 6593.11 was reindexed to reflect the new reference. The Department has determined these are non-substantial changes.
2. All the exhibits in Section 6593.8 of the original proposed regulations were relocated into one section for ease of reproducing the regulation text. Section 6593.12 was added to the proposed regulations specifically for the exhibits, which were deleted from Section 6593.8.

All references to the exhibits in Section 6593.8 were revised to reflect the new location in Section 6593.12. Also, the fiscal year dates in the exhibits were modified to reflect a dash rather than a slash. The Department has determined these are non-substantial changes.

3. There were several grammatical and punctuation changes made to the regulations as originally proposed that the Department has determined are non-substantial changes. These changes are shown in the amended regulation text by bold text and double strikeout or double underline and are detailed below.

The following changes relate to the use of capital letters. Boating Safety and Enforcement Financial Aid Program is the title of the program and is capitalized. The department is not capitalized nor is county board of supervisors or county auditor. Also, section is not capitalized in the context shown below.

Section 6593.1. “The purpose of the ~~b~~Boating ~~s~~Safety and ~~e~~Enforcement ~~f~~Financial ~~a~~Aid ~~p~~Program is to augment ...”

Section 6593.2(b). “...or applies to participate, in the ~~b~~Boating ~~s~~Safety and ~~e~~Enforcement ~~f~~Financial ~~a~~Aid ~~p~~Program.”

Section 6593.3. “The provisions of the ~~b~~Boating ~~s~~Safety and ~~e~~Enforcement ~~f~~Financial ~~a~~Aid ~~p~~Program, ...”

Section 6593.5(a). “An applicant agency provides a certified copy of the resolution or minute order from the ~~C~~County ~~B~~Board of ~~S~~Supervisors with the application for financial aid under the provisions of Section 663.7 of the Harbors and Navigation Code.”

Section 6593.5(a)(1). “...its ~~C~~County ~~B~~Board of ~~S~~Supervisors, authorizing the agency to participate in the program.”

Section 6593.5(a)(2)(C). “Authorize the ~~C~~County ~~A~~Auditor to certify the amount of prior year vessel taxes received by the county.”

Section 6593.6(a). “An agency applying for financial aid under the ~~b~~Boating ~~s~~Safety and ~~e~~Enforcement ~~f~~Financial ~~a~~Aid ~~p~~Program...”

Section 6593.7(b). “The ~~D~~Department shall send every participating agency a contract at least 90 days prior to the start of the fiscal year. A participating agency shall sign and return the contract to the ~~D~~Department at least 15 days prior to the start of the fiscal year.”

Section 6593.8. “... under the ~~b~~Boating ~~s~~Safety and ~~e~~Enforcement ~~f~~Financial ~~a~~Aid ~~p~~Program. “

Section 6593.9. “All program expenditures, including those made with vessel taxes received by the county, shall comply with the requirements of this ~~S~~Section.”

Section 6593.10. “...under the ~~b~~Boating ~~s~~Safety and ~~e~~Enforcement ~~f~~Financial ~~a~~Aid ~~p~~Program.”

Section 6593.10(e)(2). “This publication is available from the ~~D~~Department.”

Section 6593.11(a). “...under the ~~b~~Boating ~~s~~Safety and ~~e~~Enforcement ~~f~~Financial ~~a~~Aid ~~p~~Program.”

The following changes were made to reflect correct use of commas, hyphens, and apostrophes.

Section 6593.1. "...The program is not intended to fully fund a participating agency's boating safety and enforcement activities, and agency participation in the program is entirely voluntary."

Section 6593.4(c). "Supervision of organized ~~on the water~~ on-the-water boating activities or water events that allows for the protection and safety of the boating public during such activities or events."

Section 6593.4(d). "Search and rescue operations originating from ~~on the water~~ on-the-water boating activities, including the recovery of drowned bodies that are the result of boating activities."

Section 6593.8(a). "...fiscal year 1996~~4~~97 shall receive, at a minimum, the amount of the fiscal year 1996~~4~~97..."

Section 6593.8(b). "...fiscal year 1996~~4~~97 but prior to fiscal year 2003~~4~~9 shall receive..."

Section 6593.8(d)(1). "Each agency shall justify the estimated number of ~~work-hours~~ work hours of patrol..."

Section 6593.8(d)(3). "The first~~2~~1 year eligibility allocation for any new agency..."

Section 6593.8(e). "Beginning with fiscal year 2004~~4~~9 and continuing..."

Section 6593.8(f). "Beginning with fiscal year 2004~~4~~9 and continuing..."

Section 6593.10(c). "...the boating safety and enforcement officer's~~2~~2 hourly pay..."

The following changes were grammatical and did not change the meaning of the sentence as presented in the original proposed regulations.

Section 6593.2(c). "'Allowable costs or expenses' means the costs or expenditures made by a participating agency that are authorized ~~and allowed~~ by the department."

Section 6593.6(c). "Size of waterway(s) (in square miles for lakes and in miles for rivers or coastline)."

Section 6593.7(b). "... participating agency losing their financial aid eligibility allocation for ~~the ensuing~~ that fiscal year."

Section 6593.9(b)(2). "~~Also, a~~ participating agency may use vessel taxes received..."

Section 6593.10(g). "... once the department has completed the ~~desk~~ review and approved the claim for payment."

Section 6593.10(h)(1). "... and date of invoice received are not ~~determining~~ factors in determining the fiscal year in which expenditure is made."

Section 6593.11(a). "The department shall maintain adequate controls to ensure responsibility and accountability for the expenditure of State funds. ~~As such, the~~ The

department may conduct periodic systematic audits of a participating agency in order to determine whether an agency is in compliance with State law and ~~Section 663.7 of the Harbors and Navigation Code and the department's regulations~~, the claims submitted by a participating agency accurately represent the amount due the agency under the ~~bBoating sSafety and eEnforcement fFinancial aAid pProgram, and funds have been expended as required by law or regulation.~~

Section 6593.11(e). "If the department conducts an audit of a participating agency, the department shall issue an audit report to the participating agency. The audit report shall include a description of how the audit was performed, and a summary of audit exceptions and management improvement recommendations, ~~and, to the extent possible~~ If applicable, a correction plan shall be discussed with the participating agency describing the specific actions that are ~~planned~~ recommended to be taken..."

Section 6593.11(f). "When ~~it is established upon an~~ an audit indicates that a participating agency has claimed and received payments from the department under this program to which it is not entitled..."

Section 6593.11(h). "If ~~resolution the appeal~~ is not resolved to the participating agency's satisfaction, the participating agency may..."

Exhibit 4.

|                    | Total Estimated Boating Safety and Enforcement Costs             |         |
|--------------------|--|---------|
| Provided by Agency | 1. Estimated <del>Work Hours</del> <u>Work Hours</u>             | 1,300   |
| Provided by Agency | 2. <del>Average</del> Hourly Pay <del>Journeyman Mid-Range</del> | \$25.00 |
| Provided by Agency | 3. <del>Customary Average</del> Fringe Benefits Percent          | 33%     |

4. There were several non-substantial clarifying changes made to the text of the proposed regulations. These changes are discussed below.

Section 6593.2(l) was clarified to read, "'Fringe benefits percent" is the percentage used by the participating or applicant agency to estimate the costs of non-salary benefits for an employee, such as workers' compensation premiums, retirement contributions, uniform allowances, insurance, payments made under the Federal Insurance Contributions Act, and any other employee benefit approved by the department." This change provides examples of fringe benefits and is consistent with Section 6593.9(a)(1) regarding allowable costs under the program.

Section 6593.2(p) was clarified to read, "'Unallocated funds" are funds that have not been spent or used by participating agencies' boating safety and enforcement programs pursuant to section 6593.8(c) of this article, as a result of participating agencies' program reductions." This change provides a more precise explanation of what constitutes unallocated funds by referencing the regulation section that relates to program reductions.

Section 6593.6(a) was clarified to read, "The annual Boating Safety and Enforcement Financial Aid Program application for a county shall accompany all applications from other governmental agencies within the county requesting aid from the department." This

change clarifies that the application submitted by each county is the Boating Safety and Enforcement Financial Aid Program application and not some other application. This change also clarifies that the application should accompany all applications from government entities within a County requesting aid from the department. The Initial Statement of Reasons provides additional detail as to why this application is necessary.

Section 6593.7(a) was clarified to read, “**Beginning in fiscal year 2003-04, E**very participating agency shall enter into an annual contract...” Several written and oral comments indicated some confusion from affected agencies as to the effective date of various aspects of the regulations. This and several other changes were made to clarify the effective dates for these agencies.

Section 6593.9 was clarified to read, “**Beginning in fiscal year 2003-04, A**ll program expenditures...” for the reason listed above. Likewise, Section 6593.10 was clarified to read, “**Beginning in fiscal year 2003-04, T**he following procedures...” in order to inform agencies as to the effective date of the section.

Section 6593.8(c)(1) was clarified to read, “A participating agency that ~~does not~~ **spends less than** their ~~entire~~ baseline State financial eligibility allocation in ~~either both~~ calendar year 2003 ~~or and~~ calendar year 2004 shall have their eligibility allocation reduced in fiscal year 2005-06.” This change is intended to clarify the conditions under which a participating agency’s allocation is reduced and to make Section 6593.8(c)(1) consistent with the Initial Statement of Reasons.

Section 6593.8(c)(2) was clarified to read, “A participating agency that ~~does not~~ **spends less than** their ~~entire~~ baseline State financial eligibility allocation **during a calendar year period**, in ~~either of~~ the two most recent calendar years, shall have their eligibility allocation reduced in the next fiscal year.” This change is consistent with the change listed above and is intended to clarify when a participating agency’s allocation is reduced consistent with the Initial Statement of Reasons.

Several public comments indicated confusion as to the application of the formula contained in Section 6593.8(d). To clarify, Section 6593.8(d) was amended to read, “Beginning with fiscal year 2003-04 and continuing with each fiscal year thereafter, the formula for ~~an~~ **new, non-participating** applicant agency applying to the program shall be as follows...” This clarification addresses public comments concerning the applicability of Section 6593.8(d) to existing participating agencies.

A comment received during the 15-day notice period caused the Department to revisit the wording of Section 6593.10(a). As a result, Section 6593.10(a) was clarified to read, “The department shall provide financial aid, under Section 663.7 of the Harbors and Navigation Code, in the form of reimbursements to cover the costs incurred by a participating agency for boating safety and enforcement activities that exceed vessel taxes received by the county ~~for such services~~, up to the participating agency’s State financial eligibility allocation amount.” Harbors and Navigation Code Section 663.7 does not require that funds received for such services be used for boating safety and enforcement activities, so this section was clarified to be less restrictive.

Several public comments inquired whether sick leave and vacation time was to be included in the actual number of hours used for reimbursement. Section 6593.10(c) was clarified to read,

“Personnel costs shall be reimbursed based on the actual number of hours spent on boating safety and enforcement activities, **including associated sick leave, vacation, and compensatory time off**, during the month or quarter by each boating safety and enforcement officer of the participating agency. Actual hours, **and associated sick leave, vacation, and compensatory time off**, for each boating safety and enforcement officer shall be multiplied by the boating safety and enforcement officer’s hourly pay to determine direct salary costs.” This change meets the intent provided in the Initial Statement of Reasons and clarifies reimbursement for participating agencies.

*Sufficiently related other changes to the text of the proposed regulations*

There were four sufficiently related other changes as a result of public comments.

1. Several affected parties requested that the application process be shortened for agencies that had previously applied to and been accepted into the program (i.e., participating agencies). Harbors and Navigation Code Section 663.7(i) requires that all agencies applying to the program submit applications to the Department at least six months prior to the start of the fiscal year. Section 6593.6(d) of the proposed regulations, as originally proposed, would have required all agencies to submit applications 14 months prior to the start of the fiscal year in order for the Department to have sufficient time to request additional funds through the budget process. However, the Department does not require as much time when the amount requested is the same as the previous year. Thus, based on public comments and a review of Harbors and Navigation Code Section 663.7, the original text of Section 6593.6(d) of the proposed regulations was replaced with the following, “**A participating agency shall submit a completed application to the department at least six months prior to the start of the fiscal year for which State financial aid is requested. A new applicant agency shall submit a completed application to the department at least 14 months prior to the start of the fiscal year for which State financial aid is requested.**”
2. The Department received public comments requesting that agencies have the option to use actual hourly pay and actual fringe benefit percentages on the annual application when such amounts are known. Section 6593.8(d)(2) was changed to read, “The number of ~~work hours~~ **work hours** shall be multiplied by **either the agency’s actual hourly pay of boating safety and enforcement officers, or** the agency’s mid-range or equivalent (i.e., third of five pay steps) journeyman level average hourly pay, and **either the agency’s actual fringe benefit percent for boating safety and enforcement officers, or** the agency’s customary average fringe benefits percent, to estimate total personnel costs.” The Department has determined that these amendments are sufficiently related to the original proposed regulations as they provide other alternatives for applicant agencies to use when calculating an agency’s baseline state financial aid amount and ease the burden on applicant agencies, which is still consistent with the Initial Statement of Reasons.
3. The Department did not intend to limit the scope of Section 6593.9(a)(1) to only other benefits contained in a local bargaining agreement. Management personnel may have other benefits but not have a local bargaining agreement, and it is not the intent of the regulation to exclude such benefits from reimbursement. Thus, Section 6593.9(a)(1) was changed to read, “Personnel costs of boating safety and enforcement officers, including, but not limited to, salaries, wages, overtime and holiday pay, differential pay, on-call pay, workers’

compensation premiums, retirement contributions, uniform allowances, insurance, payments made under the Federal Insurance Contributions Act, and any other employee benefit ~~which is included in a participating agency's local bargaining agreement and~~ approved by the department." The Department has determined that these amendments are sufficiently related to the original proposed regulations as they are intended to cover both represented and non-represented employees while the original regulations inadvertently only covered represented employees.

4. An inadvertent error in Section 6593.9(b)(5) makes this section inconsistent with the Initial Statement of Reasons and Section 6593.9(a)(3) of the proposed regulations. Section 6593.9(b)(5) was changed to read, "Any administrative or overhead costs that exceed ~~ten~~ five percent of the total allowable direct program costs of a participating agency's boating safety and enforcement program." The Department has determined that these amendments are sufficiently related inadvertent oversights from the initial publication of the regulations and are required for Section 6593.9(b)(5) to be consistent with Section 6593.9(a)(3).

**II. Summary of Objections or Recommendations Made Regarding the Specific Adoption, Amendment or Repeal Proposed.** The initial 45-day public comment period for this rulemaking process began on May 31, 2002 and ended on July 25, 2002. Nine entities provided comments and suggestions regarding the proposed regulations. The 15-day public comment period began on October 15, 2002 and ended on October 30, 2002. Four entities provided comments during the 15-day notice of availability; however, the majority of these comments did not relate to modifications to the regulation text.

Public comments were received in two forms: written correspondence submitted to the Department and oral statements during the public hearing, which was held on July 25, 2002. Most of the oral comments were submitted in writing as well as reduced to writing in the form of minutes of the hearing prepared by the Department. The Department has summarized the public comments received and provided its responses to these comments in Attachment 1 to this statement. Comments and responses in Attachment 1 are organized based on regulation section. To the extent the comments recommended changes in the regulations as proposed, the Department's responses explain why the recommended change was not made, as required by Government Code Section 11346.9(a)(3), or indicate how the regulations were changed to accommodate the comment.

**III. Determination Regarding Alternatives.** Several alternative allocation formulas and reimbursement processes were considered as discussed in the Notice of Proposed Rulemaking Consideration of Alternatives, the Initial Statement of Reasons (page 11), and the responses to public comments regarding sections 6593.8 and 6593.10 of the proposed regulations. The Department has determined that none of these alternatives would be more effective in carrying out the intent for which the regulation is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulations. Information in support of this determination is contained in the above referenced documents.

**IV. Alternatives to Reduce Impacts on Small Business.** The Department has determined that the proposed regulatory action has no impact on small businesses because only a County, or a public agency within a County, may participate in the boating safety and enforcement program, and neither of these types of entities are small businesses.

**V. Determination as to Whether the Proposed Regulations Impose a Mandate on Local Agencies or School Districts.** The Department has determined that adoption of these regulations does not impose a mandate on any local agencies or school districts. Please see page two of the Notice of Regulatory Action and the Department's statement under Section A of the Fiscal Impact Statement (STD 399).